

Some Issues of Criminal-Legal Protection of Minors in the Republic of Uzbekistan

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Abstract

The article deals with the issue of criminal-legal protection of minors in the criminal legislation of the Republic of Uzbekistan. In particular, norms of the Criminal code, regulating criminal-legal relations with minors are analyzed. Scientific approaches and experience of foreign countries were studied in this regard. As a conclusion, the fact that the norms of the General and Special parts of the Criminal Code, which provide for the criminal-legal protection of minors, are interconnected and complement each other, the need to make changes and additions to some articles is justified.

Keywords: youth, minor, a person in a weak state, criminal-legal protection, crime against a person who is under the age of eighteen, administrative prejudice, antisocial behavior, crime.

In Uzbekistan, one of the most important and priority areas of state policy is to give a great attention to youth, because the rapid development and progress of the country is primarily determined by human capital, especially the youth of the country, and this process is based on the proper education and training of young people, strengthening their involvement in science and in this regard, it depends on the effective solution of existing problems [1].

Today, in our country, a legal framework has been created to protect the rights and interests of young people, to create the necessary conditions and opportunities for them, and this system is being improved based on the needs of the times. In particular, more than 40 laws on youth issues were adopted by the legislator, more than 30 international agreements were ratified, and more than 100 legal documents were developed to ensure the implementation of these laws. Among these documents, the Law of the Republic of Uzbekistan “On State policy regarding youth” adopted September 14, 2016 can be mentioned as the law that defines the conceptual approach of our country to the field.

At the same time, it should be noted that, despite the fact that in our republic attention is paid to young people as a state policy, conditions are created for them to show their potential, systematic and wide-scale measures are implemented; there are cases of crime among minors. In particular, according to the information of the Ministry of Internal Affairs of the Republic of Uzbekistan, crimes of a property nature: theft, robbery, invasion, extortion, fraud are committed by young people.

The statistics show that the number of crimes among young people has been decreasing over the years. However, it should be remembered that many minors are released from criminal liability as a result of the humanitarian and forgiving policy carried out by the state leadership, and even if one

young child becomes a criminal, it is a defeat for our society [2].

What is the status of minors in the Criminal code of the Republic of Uzbekistan? Questions arise. First of all, the issue related to the status of minors can be considered from the point of view of dividing the criminal legislation of the Republic of Uzbekistan into General and Special parts. In Article 17 of the Criminal code (Responsibility of individuals), the age of the subject of the crime is differentiated for the specific criminal elements provided for in the Special Part of this Code.

The current Criminal Code clearly specifies what criminal acts are punishable for persons who have reached the age of fourteen before committing the crime. In particular, Articles 97, 98, 104 -106, 118, 119, 137, 164-166, 169, the second and third parts of Article 173, Articles 220, 222, 247, 252, 263, 267, 271, 277 -crimes provided for in the second and third parts of the article.

The age of the general subject is sixteen, which means that a person under the age of sixteen will not be prosecuted for any crime other than the above-mentioned crimes. Also, committed socially dangerous acts provided for in Articles 122, 123, 1251, 127, 127-1, 128-1, 144, 146, 193 - 195, 205 - 210, 225, 226, 230 - 232, 234, 235, 279 - 302 of the Criminal code juvenile liability is established after reaching eighteen years of age, which means that the criminal charge of this type of crime by minors excludes liability.

According to M.X.Rustambaev, according to the cases of the Criminal code, the minors for criminal prosecution, who has reached the age of 14, but not reached the age of 18 before the crime is committed [3].

The institution of participation in crime also includes provisions related to the protection of minors. Article 28 of the Criminal code (types of participants in crime) states that a person who commits a crime using persons who cannot be held accountable in accordance with the Criminal code (here, minors and mentally retarded persons) is considered a committer [4].

The issue of minors is also related to the issue of finding the subject of the crime as a very dangerous recidivist. In accordance with part 6 of Article 34 of the Criminal code, when considering the issue of declaring a person a very dangerous recidivist, the fact that he was convicted of a crime committed before the age of eighteen, as well as the fact that the time limit for the conviction has passed or the conviction has been removed in accordance with the law, are not taken into account [5].

Also, the commission of a crime by a minor is a mitigating circumstance in the issue of sentencing (Article 55, paragraph "j" of the Criminal code). In addition, according to the Decision No. 21 of the Supreme court of the Republic of Uzbekistan "On Juvenile case practice", if there is illegal or provocative behavior of adults, including those who were found to be victims in the case, before the minor commits a crime, the court may have the right to find the situation mitigating the punishment of the guilty party. Meanwhile, the Criminal code in accordance with paragraph "g" of part 1 of Article 55, it should be taken into account that committing a crime as a result of physical or mental coercion or due to material, service-related and other dependence of a minor is included in mitigating circumstances. At the same time, it is established that committing a crime against a young child or a person in a weak state (paragraph "b" of Article 56 of the Criminal code) or using a young child (paragraph "j" of Article 56 of the Criminal code) is considered an aggravating circumstance of punishment [6].

The sixth section of the Criminal code, which deals with the responsibility of minors, describes the punishments assigned to this category of persons and the procedure for their appointment, as well as the provisions on the exemption of this category of persons from responsibility or punishment.

The analysis of these articles shows that the legislator created an opportunity to investigating and

judicial authorities for effective use of the principles of justice and humanity in sentencing, responsibility and exemption from punishment of minors.

In particular, in article 86 of the Criminal code (Sentence of punishment) when sentencing minors, the court shall follow the general principles of sentencing, while taking into account the level of development, living conditions and upbringing of the minor, health, the reasons for the crime committed, the influence of adults and other circumstances on his personality. It is noted that it is necessary to get it. That is, investigative and judicial bodies should study the living and upbringing conditions of a minor, whether he has parents, whether they or their substitutes are fulfilling their duties related to the upbringing of a teenager, the surrounding persons and conditions in his life, family, relatives - should determine the relations between the races, the socio-psychological environment in the educational institution, etc.

In this regard, it is important to determine the subjective attitude of a minor to the crime he committed, including the form and types of guilt, motive, purpose, emotional state, etc. It is also necessary to study the “influence of adults” on a minor. This concept means the behavior and attitudes of adults that passively, indirectly or directly allow a teenager to engage in antisocial behavior, including criminal behavior.

The content of the provisions related to the release of a minor from responsibility or punishment with the use of coercive measures provided for in the Criminal law, that the measures in this regard are not intended to hold the young generation responsible and punish, but to re-educate them, return them to society, and form them in the spirit of national values and observance of laws [7].

While condemning the act, the court tries to convey to the mind and understanding of the minor that his previous behavior was wrong and that such behavior cannot be allowed in the future. At the same time, this does not exclude the use of forcible measures. This is reflected in the measures used instead of punishment [8].

Such a legal decision is related to a number of factors, but, first of all, the psychophysiological development of minors, their level of adaptation to society. Taking into account the biological, physiological and social factors in the formation of a person, based on the characteristics of this category of persons, determined the need to change the approach to the content of the provisions of a number of institutions of criminal law at the legal level [9].

In the Special part of the Criminal law, criminal-legal protection of minors and separate criminal elements that provide for responsibility for crimes committed by them can be said to have specific aspects and structure.

In particular, in articles 103, 103-1, 110, 113, 137, 148-2, 216-1, 235 and 245 of the Criminal code, the commission of a crime “against a minor” is specified as a special annoying factor. In some articles, minors represent the characteristics of both the object of the crime and the objective party (method, place, situation of committing the crime, means of achieving criminal goals, etc.) and in some cases subjective characteristics (Articles 145, 148 of the Criminal code). For example, committing socially dangerous acts provided for in Articles 145, 148, 148-1, 244-2, 277, 278 of the Criminal code for involving minors in crime, attracting (using) or humiliating them (paragraph “d” part 2 of article 277 of the Criminal code) provides for responsibility for judging from the practice of judicial investigation bodies and the contents of the decisions of the Plenum of the Supreme court of the Republic of Uzbekistan, it can be said that in some cases the sentence “minor” may correspond to the sentence “person in a weak state”. The mentioned qualifier may refer to a crime committed against a minor in some criminal categories. For example, when the crime of intentional homicide is committed against a young child, the situation is qualified by paragraph “v” of part 2 of article 97 of the Criminal code

[10].

In the Special part of the Criminal code, instead of the term “minor” as an aggravating factor for some criminal offenses, the age limit of the person (14, 16 and 18 years) and the criteria of the age of the minor being unknown to the committer have been established. Such aggravating qualifications can be found in articles 118, 119, 128, 1281, 129, 135 of the Criminal code. At this point, it should be noted that in articles 118 and 119 of the Criminal Code, the criminal-legal protection of a person's sexual freedom is divided in terms of age (infringing on the sexual freedom of a person under the age of fourteen is considered more serious than committing such a crime against a minor under the age of eighteen).

One of the unique features of the Criminal law is that some criminal offenses contain several qualifying signs related to a minor at the same time. For example, in the crime of torture (part 2 of article 110) “in relation to a minor” and “in relation to a person whose infirmity is obvious to the guilty” are indicated as separate qualifying marks. A similar situation can be seen in the crime of human trafficking (clauses «v» and «g» part 2 and clause «a» part 3 of article 135 of the Criminal code). In particular, in this norm, the legislator defined “a person whose infirmity is obvious to the perpetrator”, “a person who is materially or otherwise dependent on the perpetrator” as aggravating circumstances for the commission of the crime of human trafficking, as a special aggravating circumstance “a person who is obvious to the perpetrator that he or she has not reached the age of eighteen” regarding will be committed.

So, when these crimes with several qualifying marks are committed against a minor, how are such acts qualified?

In our opinion, in such cases, it is possible to approach from two different points of view. First, if a minor is in a weak state (a young child, disabled, etc.) and does not have the opportunity to defend himself, or if he is financially or otherwise dependent on the perpetrator, it is qualified by the clauses of the relevant parts of these articles. On the contrary, if a minor has the opportunity to defend himself, if he is mentally, physiologically and biologically suitable for his age, if he is not dependent on the culprit, that is, if there are no other qualifying signs in the act, then only the elements of this crime “against a minor” or “a person who is obvious to the perpetrator that he or she has not reached the age of eighteen” is qualified by the clauses themselves.

In order to ensure legal protection of minors in social, civil-family relations, a number of specific criminal-legal norms have been included in our criminal legislation.

In particular, for evading the financial support of minors or persons incapable of work (Article 122 of the Criminal code) and violating the law on the age of marriage (Article 1251 of the Criminal code), as well as intentionally replacing a child (Article 124 of the Criminal code) and revealing the secret of adoption (Criminal liability is established for Article 125 of the Criminal code).

In the Criminal code of the Republic of Uzbekistan, there is a separate criminal structure for involving minors in antisocial behavior, as well as in a crime, and some criminal legal norms provide for criminal liability with a special aggravating sign for involving minors in antisocial behavior.

In general, what is antisocial behavior and are they different from criminal acts? The question arises.

According to the researcher N. U. Ashurova, antisocial behavior - regular consumption of alcohol, narcotic drugs, psychotropic substances or their analogues - other substances that affect mental activity, prostitution, begging by a minor, as well as the rights of other citizens, expressed in other actions that violate their freedoms and legal interests [11].

Such crimes include Article 127 (Involvement of a minor in antisocial behavior), Article 127-1 (Begging), Article 130 (Preparation, import, distribution, advertising, display of pornographic products) and Article 131 of the Criminal code. (Partnering or keeping a brothel).

In fact, antisocial behavior is similar to a crime in terms of its content and level of social danger, but it is not a criminal act. Incitement to commit is an object of criminal legal protection. Because, involving a minor to consume alcohol, drugs and substances that affect a person's intelligence, narcotics, their analogues or psychotropic substances, to beg, engage in prostitution, as a performer of pornographic actions, cruelty, indifference, narrowing of the range of interests, giving up honest work, disrespecting the work of others, being interested in and giving to an easy life, not distinguishing between honest and illegal, lack of education, lack of conscience and spiritual poverty, the disappearance of intellectual and moral qualities, the replacement of socially useful things by negative features brings This has a negative impact on the normal development and formation of the young generation as a person, leads to the destruction of the nation's gene pool, creates the ground and conditions for them to commit crimes, and as a result, a serious criminogenic situation is formed.

As a result of the review of articles related to involvement of minors in antisocial behavior, it was found that there are some aspects that need to be improved.

In particular, according to the content and structure of article 127 of the Criminal code, it can be conditionally divided into two parts: part 1 the involvement of a minor in antisocial behavior, part 2 the involvement of a minor in a crime, despite the fact that the article is called the involving of a minor in antisocial behavior, it is also includes criminal liability for involvement in crime.

According to Article 15 of the Criminal code, depending on the classification of crimes and forms of participation, it is appropriate to form the involvement of a minor in a crime as a separate crime and to include aggravating factors in it.

Declaring these provisions in one criminal-legal norm makes it difficult to make a correct legal assessment of crime among minors, and it is considered contrary to the legislative technique. In addition, in our current legislation, the provisions determining responsibility for attracting minors to begging (Article 127-1 of the Criminal code) and engaging in prostitution (Article 131 of the Criminal code), which must be specified in the disposition of Article 127, are specified in other criminal categories. To attract a minor to use narcotic drugs, their analogues, or psychotropic substances, as well as to attract a minor to use narcotic drugs, their analogues, or psychotropic substances [12], the cases of illegal handling of which are increasing today, and the consumption of strong or poisonous substances, which are customary among young people (Article 251-1 of Criminal code) it is appropriate to add attraction to consumption.

In this regard there is a collision in the most Criminal code of the Republic of Uzbekistan. According to Part 1 of article 127 of the Criminal code criminal liability for involvement of the minor in the use of the substances or means which are not narcotic and their analogs or psychotropic, but influencing intellectual and strong-willed activity, made after application of an administrative penalty for the same actions. According to part 1 of article 274 of the Code the criminal liability for involvement in consumption of the drugs, their analogs, psychotropic or other substances influencing intellectual and strong-willed activity in any form is established. That is according to part 1 article 127 of the Criminal Code the adult person at first is brought to administrative responsibility for involvement of the minor in the use of the substances or means which are not narcotic and their analogs or psychotropic, but influencing intellectual and strong-willed activity, and at repeated commission of this act within a year there comes criminal liability. According to part 1 of article 274 of the Criminal Code the adult is held criminally responsible for involvement in consumption of other substances influencing intellectual

and strong-willed activity in any form. It demonstrates the need of elimination of this collision situation and strengthening of criminal protection of minors for criminal law.

It is also necessary to note that the criminal elements provided for in articles 122, 1251, 127, 1271, 1481, 278 of the Criminal code against minors or with their participation have administrative prejudice [13]. In our opinion, these crimes are more antisocial than criminal acts, and it can be said that the legislator intended to strengthen the importance of criminal-legal protection of minors.

In addition, preparing or importing into the territory of the Republic of Uzbekistan for the purpose of distributing, advertising, or showing a pornographic product in which a minor is described or depicted, as provided for in part 3 of article 130 of the Criminal code, as well as distributing, advertising, showing or a minor it is appropriate to include provisions similar to engaging as a performer of pornographic acts in Article 130-1 (Preparation, import, distribution, advertising, display of products promoting violence or cruelty). Tendency to violence and brutality, susceptibility to external influences is strong in the young generation, when minors see such scenes, pictures, videos performed by or with the participation of their peers, they also try to repeat these negative vices.

It should be noted that these social relations cannot be effectively solved by criminal-legal protection alone, a systematic approach to the issue is necessary, prevention of crime among minors is also related to the competitiveness of our society's spiritual and educational processes, values, national mentality and ideological immunity. Article 121 of the Law of the Republic of Uzbekistan "On informatization" provides for the distribution of certain categories of information on the Internet global information network [14], including:

Calling for forceful changes to the existing constitutional system and territorial integrity of the Republic of Uzbekistan;

Promotion of war, violence and terrorism, as well as ideas of religious extremism, separatism and fanaticism;

Disclosure of information that is a state secret or other secret protected by law;

Dissemination of information inciting national, racial, ethnic or religious enmity;

Promotion of narcotic drugs, psychotropic substances and precursors, unless otherwise provided by law;

Promotion of pornography;

According to the law, the use of information for the purpose of committing criminal and other actions causing personal liability is prohibited.

Nevertheless, the number of inappropriate video-photo products and fake materials spreading on the Internet, social networks, foreign TV serials and films (promoting violence, brutality, armed conflicts and military operations, and therefore covering situations of a pornographic nature) shown on various TV channels, its increase has a negative impact on the education of young people, the strengthening of our traditional values, and our national mentality [15,16]. In terms of communication culture, the development of slang words among young people, addiction to the Internet and social networks, and the use of various negative sites lead to a decrease in the level of our youth.

Improving national legislation by studying foreign experience is important from today's point of view. For example, in the United States of America, any person who has reached the age of 18 is liable for the intentional use of violence against a minor. Part 2 of the UK Sexual freedoms offenses Act deals with offenses against children's sexual freedoms, making it an offense to force a child under the age of 13 to engage in sexual activity. In the German Criminal code, promotion of sexual relations to minors

is a special liability, and such an act of a person responsible for the patronage and protection of a person under the age of 16 is defined as an aggravating circumstance. In the Swiss Criminal code, responsibility is established for inciting a minor to prostitution, providing minors with articles that threaten their health. The Japanese law criminalizes the recruitment of minors into a criminal group by coercion or persuasion by members of a criminal group.

Based on the above, the following conclusions can be formed:

“youth” means persons who have reached the age of fourteen and are not older than thirty, but instead of this sentence, the term “minors” is used in law enforcement activities, including the law on administrative responsibility, criminal, criminal executive and criminal procedural law, at the same time, the concept of “youth” includes “minors”. The sentences “young child”, “person in a weak situation”, “committing a crime due to financial, service and other dependence of a person”, “person under 14, 16 or 18 years of age” used in our current criminal legislation express the concept of “minor”. In some cases, the signs “disabled person”, “committing a crime due to a person's financial, service-related and other dependence” can be qualified as an additional qualifying sign along with the sentence “against a minor”;

in the Criminal code, the fact that a person is underage is in some cases the object of criminal aggression (the victim), in some cases the objective aspect of the crime (method, means of committing the crime), the subject of the crime (criminal acts committed by persons who have reached the age of 14), and in some cases is subjective aspect of the crime;

the essence of the Criminal law norms is the fact that legislative investigation and judicial bodies have the possibility to effectively apply the state's fair and high humane policy in determining punishment, responsibility and exemption from punishment for minors, as well as the reduced punishment of criminal punishments and other legal measures applied to the younger generation shows that these measures are not punishing, but are aimed at re-educating them, returning them to society, and forming them in the spirit of observing national values and laws;

it is desirable to revise the criminal legal norms related to minors in the criminal legislation, in particular, to formulate the criminal acts related to attracting a minor to antisocial behavior and involving him in a crime in two criminal legal norms in the Criminal code, in addition to Article 127 of the Criminal code of substance in part 2: after the words “narcotic drugs, psychotropic substances or their analogues...”, adding the sentences “also attracting a minor to use powerful or toxic substances”;

the introduction of the following provision as part 3 of Article 130-1 of the Criminal code: “Making or bringing into the territory of the Republic of Uzbekistan for the purpose of distribution, advertising, display of a product promoting violence or cruelty in which a minor is described or depicted, as well as its distribution, advertising, display, committing or involving a minor as a performer of acts of violence or brutality”.

In conclusion, it can be said that it is necessary to improve the norms related to the criminal-legal protection of minors, but this is not enough to achieve an effective result in this regard, a systematic approach to the issue is necessary, and other areas (for example, crime prevention and delinquency prevention among minors) should be paid close attention to.

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